

REMARKS

Claims 227, 332-337, and 340 are pending in the present application. Claims 227, 332-337, and 340 stand rejected under 35 USC §112. Claims 271, 332-337, and 340 stand rejected under 35 USC §103. Claims 1-270, 272-331, and 338-339 have been previously canceled. Applicants amend independent claim 371 to more particularly point out applicant's invention.

35 USC §112

Applicants have amended claim 271 to include the limitation "wherein said at least one electrode within a void has a common polarity." Figures 10 and 11 of the present application show a variety of recessed electrode configurations, each including a single electrode within each void. If there is only one electrode within the void, that all electrodes within the void must have a common polarity. Hence the figures clearly disclose "at least one electrode recessed within each void, wherein said at least one electrode within a void has a common polarity." Two or more electrodes, common to each other, within the void would clearly fall within the spirit and scope of the invention.

35 USC §103

As explained in the previous office action, placing an electrode within a void, tends to focus the electrical field on the retina. Providing electrodes with opposite polarity within the same void, as described in De Juan, would not have that effect. Shindo describes electrodes outside the body purportedly to provide a therapeutic effect. Specifically, the Shindo electrode stimulates the ciliary muscle, not the retina. The Shindo electrodes are not in an epiretinal location. The Shindo electrodes are not within a void in an electrode array body. Such electrodes, if they stimulate a percept at all, would be as unfocused as possible. Shindo's same polarity electrodes outside the body and DeJuan's opposite electrodes within a void, do not combine to provide for a single polarity electrode or electrodes within a void. Applicants have amended claim 271 to provide "an electrode array body suitable to be placed in an epiretinal location to stimulate visual percepts" The Shindo electrodes do not stimulate visual percepts. The other claims are rendered patentable by their dependence on claim 271.

Conclusion

In view of the above, reconsideration and allowance of all claims are respectfully solicited. If for any reason the Examiner finds the application other than in condition for allowance, and the Examiner believes that a teleconference may be helpful, the Examiner is invited to call the undersigned attorney at (818) 833-5055 to discuss the steps necessary for placing the application in condition for allowance.

The Commissioner is authorized to charge any additional fees, which may be required or credit overpayment to deposit account no. 50-0922. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 50-0922.

Respectfully submitted,

February 25, 2009

/Scott B. Dunbar/
Scott B. Dunbar, Reg. No. 37,124
Attorney for Applicant
Second Sight Medical Products, Inc.
12744 San Fernando Road, Building 3
Phone: (818) 833-5055
Fax: (818) 833-5080